

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ROBERT S. JOHNSON,

Defendant.

No. 08-CR-50013

MOTION TO DISMISS COUNT II OF THE INDICTMENT

NOW COMES the defendant, ROBERT S. JOHNSON, by his attorneys, SREENAN & CAIN, P.C., RANDY WILT, and moves this Court to dismiss Count II of the Indictment. In support hereof, it is stated as follows:

1. In Count II of the Indictment, Defendant is charged with a Lacey Act violation, specifically, Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(i)(13).
2. In order for there to be a Lacey Act violation, there must be a violation of some underlying State statute or Federal regulation. In Count II, it is alleged that Defendant violated 520 Illinois Compiled Statutes, Section 5/2.2 (520 ILCS 5/2.2).
3. 520 ILCS 5/2.2 is part of the Illinois Wildlife Code. (520 ILCS 5/1.1, et seq.)
4. Section 5/2.2 defines certain protected species and outlines certain prohibited acts involving those identified species and “and other living wild animal.” It applies “only” to such wildlife/wild animals.
5. Elk are not specifically identified as a protected species in Section 5/2.2.
6. In this particular case, Defendant’s elk as owned in 2005 did not meet the statutory definitions of “wild” or “wildlife.” See 520 ILCS 5/1.2s and 5/1.2t. They were born, bred, and raised in captivity in the State of Wisconsin. In Illinois, they were maintained and cared for in captivity.
7. As Defendant’s elk were not “wild” or “wildlife” within the definitions of the Wildlife Code, Section 5/2.2 of that code did not apply. Defendant’s alleged actions did not and could not violate that section.
8. Without a violation of 520 ILCS 5/2.2, the alleged Lacey Act violation did not occur as alleged in Count II of the Indictment.

WHEREFORE, the defendant, ROBERT S. JOHNSON, prays this Court enter an order dismissing Count II of the Indictment pending in the above-captioned matter.

ROBERT S. JOHNSON, Defendant,

By _____ S/
RANDY WILT, Attorney for Defendant.

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